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IN THE HIGH COURT OF CHHATTISGAH AT BILASPUR

WRIT PETITION 1705 / 2002

Smt. Mankibai Gaikwad : PETITIONER
Wife of Shri Lekhi Ram Gaikwad
Aged about 30 years
Resident of Village-Pendri,
Tahsil-Simga, District-Raipur

VERSUS

1) State of Chhattisgah : RESPONDENTS
Through the Secretary
Panchayat & Gramin Vikas
D.K. Bhavan, Raipur

2) The Collector,
Raipur

3) The Divisional Officer(SDO)
(Prescribed Authority)
Bhatapara,
District : Raipur

4) The Naib Tahsildar(Presiding Officer)
Suhela, District : Raipur

P. R. No. 1208/
Presented by Shri ...
dated ...

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

(47)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 1705/02 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17-7-2003

Shri R.S. Jaiswal, Advocate for the petitioner.

Shri S.P. Bagharia, G.A. for the State.

Heard finally with consent.

2. This petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the order dated 7-8-2003 passed by the Collector, Raipur rejecting his application on the ground that it was barred by time.

3. Earlier the petitioner has filed the petition wherein objection was raised regarding alternative remedy and this Court on 17-6-2002 passed an order that if within two weeks from that date the dispute is raised, the same shall be decided in accordance with law.

4. Counsel for the petitioner submits that he could obtain certified copy of the order on 4-7-2002 and thereafter, the petitioner had fallen ill, therefore, the dispute was raised before the Collector on 19-7-2002. He also filed the medical

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मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

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certificate. The said dispute has been dismissed as barred by time. He also submitted that the application for condonation of delay could not be filed. Counsel further submitted that the there was delay of only one day's and it was not intentional but was bonafide. He relied on a decision of Hon'ble Supreme Court in the case of Vedabai alias Vaijayantabai Baburao Patil –v- Shantaram Baburao Patil and others reported in AIR 2001 SC 2582. Para 5 of the judgment is relevant and quoted below:-

> *"In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause,' the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Civil*

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Judge is wholly erroneous and his order is unsustainable. It is evidence that the discretion under S. 5 of the Limitation Act is exercised by the Civil Judge in contravention of the law laid down by this Court, that the expression 'sufficient cause' should receive liberal construction, in catena of decisions. The High in exercising its jurisdiction under S. 115 C.P.C. failed to correct the jurisdictional error of the appellate Court."

5. Having thus considered and considering the fact that there was delay of only one days and further in view of the decision in Vedabai (supra), the delay is condoned and the period is extended and it is directed that the Collector shall decide the dispute on its own merits in accordance with law.

6. With these observations, the petition is disposed of.

7. In view of the above, M.W.P. No. 800/2002, I.A. No. 5584/2002 and I.A. No. 6530/2002 stand disposed of.

8. Certified copy as per rules.

Sd/-
Fakhruddin
Judge

Pathak

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